IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Criminal Appeal NO.475 of 1997

The Assistant Commissioner of Central Excise
Preventive Unit,
Madras-600 034 .. Appellant

vs.

1. M/s Builders Industries
Thiruvottiyur
Madras.

2. C.Mallikeswaran
Managing Partner
Builders Industries
Thiruvottiyur
Madras 600 019. .. Respondents

Prayer: This Criminal Appeal has been filed against the judgment dated 25.9.1996 passed in C.A.Nos 20 to 23 of 1992 on the file of the Principal Sessions Judge,Madras.

For Appellant : Mr. N.P.Kumar
Special Public Prosecutor
for Central Excise Cases.

For Respondents : Mr. V.Balasubramaian
and Mr.P.Ramamurthy

JUDGMENT

By way of this appeal, the appellant challenges the Judgment of the learned Principal Sessions Judge, Chennai in C.A.Nos.20 to 23 of 1992 which had arisen out of a finding in C.C.No.1680 to 1683 of 1989 on the file of the Additional Chief Metropolitan Magistrate(E.O.2) Egmore, Madras-8.

2. The complaint before the Additional Chief Metropolitan Magistrate (E.O.2), Egmore, Chennai was preferred by the Assistant Collector of Central Excise, Chennai against the accused for an offence punishable under Sections 9(1)(a)(i), 9(1)(b)(i) and 9(1)(b)(b)(i) (four counts)of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Central Excise and Salt Act 1944 (hereinafter referred to as "the Act") for the violation of payment of excise duty to the goods manufactured and fabricated by the accused. Admittedly, the first accused is engaged in the fabrication of steel structural for BHEL, Trichy, Ashok Leyland, Welmen Incondacent India Limited, South India Carbonic Gas India Limited, S.F.India Limited, Industrial Engineerings India Private Limited alias Foundary Limited, Hack Prestige Heavich Easan Limited. The second accused is the Managing Partner of the first accused. On the basis of the authorisation issued by the Assistant Collector of Central Excise Department Preventive Unit conducted a raid on 6.9.1982 in the premises of the first accused and the Officers of the Central Excise conducted a random check up of the accounts maintained by the accused firm for the year 1979 and it was brought to the light that the value of the clearance of goods for the year 1979 had exceeded the prescribed exemption limit of Rs.30 lakhs. According to the accused, the defence taken before the trial Court was that they were manufacturing the steel structural fabrications either out of the raw materials supplied by others or out of their own raw materials. According to the complainant, the first accused manufacturer had cleared the goods without obtaining Central Excise Licence and without payment of duty.

3. In C.C.1680 of 1989, P.Ws 1 and 2 were examined .Exs P1 to P13 were marked. In C.C.No.1681 of 1989 P.Ws 1 and 2 were examined and Exs P1 to P20 were exhibited. In C.C.No.1682 of 1989 Pws 1 and 2 were examined. Exs P1 to P20 were marked. In C.C.No.1683 of 1989, P.Ws 1 and 2 were examined. Exs P1 to P12 were marked.

4 In C.C.No.1680 of 1989, P.W.1 Romand, the then Superintendent of Central Excise Department(Preventive Unit) would depose that as per Ex P6, the accused have produced manufactured goods to the value of Rs.29,38,360.48ps for the year 1979-80 and as per the accounts under Exs P8,9 and 10, the accused ought to have paid Central Excise Duty to the tune of Rs.57,534.42ps for the value of the goods Rs.29,38,360/48ps manufactured by them and for the period from 8.1.1980 to 31.3.1980, the value of the goods manufactured by the accused comes to Rs.5,48,891/04 and after considering the representation made by the accused, the excise tax to be paid by the accused was fixed as Rs.13,180/01ps, but the accused without paying the above said central excise duty , they marketed the goods manufactured by them.

4b. P.W.2, Thiru C.Hari Rao, the then Superintendent of the Central Excise Department during the relevant period would depose that he had issued a show cause notice dated 1.1.1985 to the accused under the Original of ExP11.Ex P12 is the order of the departmental enquiry held by the Collector of Central Excise Department Thiru K.J.Raman. As per the said order of the Collector of Central Excise , the accused have been levied a fine of Rs.1,00,000/- under Section 173(q) of the Act and that evasion of tax by the accused for the year 1979-83 comes to Rs.4.97,222/24ps.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. In C.C.No.1681 of 1989, P.W.1 is Mr.A.Romond, the Superintendent of Central Excise Department(Preventive Unit) . According to him, on 6.9.1982 at 11.00 a.m., he along with his colleagues had conducted a search in the premises of the accused in the presence of the second accused and as per the accounts maintained by the accused, they have manufactured and fabricated steel materials to the value of more than Rs.30 lakhs for the year 1980-81 and that the goods manufactured by the accused squarely comes under Tariff 68 and that he had seized the accounts maintained by the accused under Ex P2 Mahazar in the presence of witnesses and has also furnished a copy of Mahazar to the second accused and also recorded statement from A2. Ex P3 is the statement of A2 and as per the bills Exs P6 and P7 produced by the accused, the value of the goods manufactured by the accused for the year 1980-81 comes to Rs.36,99,661/62ps and that they are liable to pay the Central Excise duty to the tune of Rs.55,972/93ps. The Collector of Central Excise, after considering the representation made by the accused, had levied only Rs.22,722/97ps towards Central Excise duty. Exs P8 to P14 are the accounts maintained by the accused for the year 1980-81.

5b) P.W.2 Thiru C.Hari Rao, the then Superintendent of the Central Excise Department during 1985 would depose that a show cause notice dated 1.1.1985 was issued by him to both the accused under the original of Ex P15. Ex P16 is the order of the Collector of Central Excise Department dated 24.10.1985 wherein he has levied Rs.1,00,000/- towards Central Excise duty for the evasion of tax to the tune of Rs.4,97,222/24ps. The said levy was imposed for the evasion of Central Excise duty by the accused for the year 1979 to 1983.

6.In C.C.No.1682 of 1989, P.W.1 Thiru A.Romond, the Superintendent of Central Excise Department (Preventive Unit)who had conducted a search on 6.9.1982 at 11.00.a.m., in the premises of the first accused along with his colleagues and in the said raid, it was brought to light that the accused have manufactured steel goods to the value of more than Rs.30 lakhs for the year 1980-81 which comes under Tariff 68 . The accounts maintained by the accused Company were seized under Ex P2 mahazar in the presence of witnesses and after furnishing copy to the accused, Ex P3 statement was also recorded from A2. The accused have manufactured the goods from out of the raw materials supplied by the various companies like BHEL, Trichy, Ashok Leyland, Welmen Incondacent India Limited, South India Carbonic Gas India Limited, S.F.India Limited, Industrial Engineerings India Private Limited alias Foundary Limited, Hack Prestige Heavich Easan Limited. As per ExP6 and Ex P7 bills, the accused have manufactured goods worth of Rs.40,26,754/28 and marketed the same and that they are liable to pay the Central Excise duty to the tune of Rs.3,22,140/34 ps. Exs P8 and P9 are the accounts maintained by the accused for the year 1981-82. He has also seized Exs P10 to P17 accounts books under Mahazar Ex P2.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6b. P.W.2 , Mr.C.Hari Rao, the then Superintendent of Central Excise Department during the relevant period would depose that a show cause notice dated 1.1.1985 was issued to both the accused and in the departmental enquiry held on 24.10.1985 by the Collector of Central Excise Department Thiru K.J.Raman who has held that the accused had evaded the Central Excise Duty to the tune of Rs.4,97,222/24ps and accordingly has levied a fine of Rs.1,00,000/- under Section 173(q) of the Act and that the evasion of the tax is relating to the period from 1979 to 1983.

7. In C.C.No.1683 of 1989, P.W1 Thiru A.Romond, the Superintendent of Central Excise Department(Preventive Unit) would depose that the accused have manufactured steel goods to the value of more than Rs.30 lakhs and from the records seized under Exs P2 to P5, it came to light that the accused have manufactured the goods with the help of raw materials supplied by BHEL, Trichy, Ashok Leyland, Welmen Incondacent India Limited, South India Carbonic Gas India Limited, S.F.India Limited, Industrial Engineerings India Private Limited alias Foundary Limited, Hack Prestige Heavich Easan Limited. As per Ex P6,P8 and P9 for the year 1982-83, the accused have manufactured the goods to the value of Rs.17,39,736/49ps. But they have evaded the central excise duty of Rs.1,39,178/92ps and the Collector of Central Excise Department has also levied a fine of Rs.1,00,000/- to the accused for the violation of Section 9(2) r/w 10 & 7A of the Act.

7b. P.W.2 Thiru C.Hari Rao, the then Superintendent of Central Excise has deposed to the fact that a show cause notice was issued to the accused on 1.1.1985 under the original of Ex P10 and that as per the departmental enquiry conducted by the Collector of Central Excise Thiru K.J.Raman, an order was passed under Ex P11 wherein the Collector of Central Excise has stated that the accused have evaded central excise duty to the tune of Rs.4,97,222/24ps and accordingly levied a fine of Rs.1,00,000/- under Section 173(q) of the Act and that the evasion of tax by the accused relates for the year 1982-83.

8. On the above evidences, when incriminating circumstances under Section 313 Cr.P.C. were put to the accused, they would deny their complicity with the crime.

9. The learned trial Judge, after going through the evidence both oral and documentary let in before him, has come to a conclusion that the guilt against the accused has been proved beyond any reasonable doubt and accordingly convicted the accused under Central Excise Rules 174 r/w Section 9(1)(a)(2) and also under Section 9(1) r/w 9(1)(b)(2)of the Act and under Rule 173-F r/w Section 9(1)(b)(ii) and Rule 173-B r/w Section 9 (1)(bb)(ii), Rule 173 C r/w Section 9(1)(bb)(ii),Rule 173-G r/w Section 9 (1)(bb)(ii) and sentenced to imprisonment till the rising of the Court and also slapped a fine of Rs.500/- under each count with default sentence in all the above said Calendar cases. Aggrieved by the findings of the learned trial Judge, the accused have preferred an appeal before the Court

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of Sessions, Chennai in C.A.Nos.20 to 23 of 1992. The learned first appellate Judge, after meticulously scanning the evidence let in before the trial Court and also after due deliberation to the arguments advanced by the learned Special Public Prosecutor and the learned counsel appearing for the appellants has held that there was no evidence let in by the prosecution to show that the goods manufactured by the accused exceeded the limit prescribed under the Act and that the trial Court without giving due consideration for the Notification No.118/75 issued under Rule 8(1) of the Central Excise Rules, 1944, the Central Government in the Ministry of Finance(DR &T) which has exempted goods falling under Item No.68 of the First Schedule to the Central Excise and Salt Act 1944(1 of 1944) and also the Notification No.119/75 dated 30.4.1975 issued by the Central Government in the Ministry of Finance wherein as per rule 8 (1) of the Central Excises Rules,1944,the Central Govoernment hereby exempted the goods falling under Item No.68 of the First Schedule to the Central Excises and Salt Act 1944(1 of 1944), manufactured in a factory as a job work from levy of excise duty and has held that the accused were not liable under the charge levelled against them and accordingly acquitted both the accused thereby allowing the appeal and setting aside the findings of the learned trial Judge. Aggrieved by the findings of the learned Principal Sessions Judge in C.A.Nos.20 to 23 of 1992, the Central Excise Department/complainant has preferred this appeal.

10.Now the point for consideration in this appeal is whether the findings of the learned Principal Sessions Judge in C.A.Nos.20 to 23 of 1992 is liable to be set aside for the reasons stated in the memorandum of appeal?

11. The Point:

Admittedly, the goods manufactured and fabricated by the accused comes under Tariff NO.68. Even according to the evidence of P.W.1, the raw materials for the manufacture and fabrication of steel goods to the accused were supplied by various companies like BHEL, Trichy, Ashok Leyland, Welmen Incondacent India Limited, South India Carbonic Gas India Limited, S.F.India Limited, Industrial Engineerings India Private Limited alias Foundary Limited, Hack Prestige Heavich Easan Limited. The learned first appellate Judge has allowed the appeal only on the ground that as per Notification No.119/75 -CE, dated 30.4.1975 issued by the Central Excise, Ministry of Finance, the accused are liable to be exempted from the Central Excise duty.

12. The learned Special Public Prosecutor for Central Excise cases would contend before this Court that Notification No 119/75 came into force only in the year 1985 and hence the accused are not entitled to take shelter under the benefits conferred in the above notification. This contention of the learned Special Public Prosecutor cannot be upheld because absolutely there is no pleadings in the grounds of appeal to the effect that the Notification No.119/75 dated 30.4.1975 came into force only in the year 1985 and that the benefits conferred under the above said

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

notification cannot be extended or availed by the accused. It is pertinent to note here that even before the learned Sessions Judge, Chennai in the first appeal, the said defence was not taken by the learned Special Public Prosecutor, who had argued the appeal. If the Notification 119/75 dated 30.4.1975 would apply to the accused then the entire charge levelled against them will go, as correctly held by the learned Principal Sessions Judge, Chennai. It is pertinent to note that the accused had already undergone the imprisonment till rising of the Court as ordered by the learned trial Judge.

13. Under such circumstances, I do not find any reason to interfere with the well considered order of the learned Principal Sessions Judge in C.A.Nos.20 to 23 of 1992 which is neither illegal nor infirm. Point is answered accordingly.

14. In the result, the appeal fails and the same is hereby dismissed confirming the judgment dated 25.9.1996 passed in C.A.Nos 20 to 23 of 1992 on the file of the Principal Sessions Judge,Madras.

15. The learned Special Public Prosecutor for Central Excise cases would submit that the observation made in this Judgment shall not affect the departmental proceedings pending against the accused before the appellate authority against the order passed by the Collector of Central Excise Department. The submission made by the learned Special Public Prosecutor has got force and it is made clear that the observations made in this Judgment shall not have any impact on the Departmental proceedings pending before the appellate authority.

sg

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Principal Sessions Judge, Chennai
2. The Additional Chief Metropolitan Magistrate, E.O.2, Egmore, Chennai
3. -do- the Chief Metropolitan Magistrate, Egmore,Chennai
4.The Assistant Commissioner of Central Excise,Preventive Unit,Chennai-33
5. The Special Public Prosecutor for Central Excise Cases, Madras.

+ One cc to M/s V. Balasubramanian Advocate sR 33650

MBS (co)

sg 13/6/07 Crl.A.No.475/1997

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/